

WILMA D. MARSH

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APRIL 22, 1958.—Committed to the Committee of the Whole House and ordered  
to be printed

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Mr. MONTONA, from the Committee on the Judiciary, submitted the  
following

R E P O R T

[To accompany H. Res. 513]

The Committee on the Judiciary, to whom was referred the resolution (H. Res. 513) providing for sending the bill H. R. 6350 and accompanying papers to the Court of Claims, having considered the same, report favorably thereon without amendment and recommend that the resolution do pass.

PURPOSE

The purpose of House Resolution 513 is to refer the bill H. R. 6350, for the relief of Wilma D. Marsh, to the Court of Claims, pursuant to sections 1492 and 2509 of title 28 of the United States Code, with the direction that the matter be considered in accordance with the provisions of those sections and the court report its findings to the House of Representatives so as to inform the Congress of the nature of the demand as a claim against the United States.

[H. R. 6350, 85th Cong., 1st sess.]

A BILL For the relief of Wilma D. Marsh

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in connection with any claim for servicemen's indemnity filed with the Administrator of Veterans' Affairs after the date of enactment of this Act on account of the death of Jimmie L. Dorser (Veterans' Administration claim numbered XC18061138), the said Jimmie L. Dorser shall be held and considered to have designated his mother, Wilma D. Marsh, North Hollywood, California, as his beneficiary for such indemnity. The enactment of this Act shall not affect payments made to any individual on account of a claim*

for servicemen's indemnity made before the date of its enactment.

STATEMENT

H. R. 6350 concerns a claim for servicemen's indemnity. As is outlined in the report of the Veterans' Administration to this committee on the bill, Mrs. Wilma D. Marsh's son, Jimmie L. Dorser, was issued a \$10,000 5-year level-premium-term national service life-insurance policy No. V-14090505, which was effective October 12, 1949. At the time he applied for the insurance, Jimmie L. Dorser named his mother and his brother as beneficiaries. His mother, who is the claimant in H. R. 6350, was named as the principal beneficiary. That insurance was subsequently reduced in amount, but the beneficiaries remained the same.

Jimmie L. Dorser was reported missing in action as of December 3, 1950, and subsequently was presumed to have died on December 31, 1953. The Servicemen's Indemnity Act of 1951 (65 Stat. 33; 38 U. S. C. 851) became law on April 25, 1951. Since this was after the serviceman was reported to be missing in action, he did not designate a beneficiary for the benefits payable under that law.

The committee has carefully considered the evidence and legal contentions submitted to the committee in connection with this claim, and is of the opinion that a court should pass upon the issues raised in this connection. In particular, questions concerning the validity of a marriage entered into by the serviceman prior to his going overseas are of such a character that this committee feels that a court should consider the questions. Accordingly, this committee recommends that House Resolution 513, referring the bill to the Court of Claims, should be considered favorably.

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VETERANS' ADMINISTRATION,  
Washington, D. C., September 11, 1957.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D. C.*

DEAR MR. CELLER: Further reference is made to your letter requesting a report by the Veterans' Administration relative to H. R. 6350, 85th Congress, a bill for the relief of Wilma D. Marsh, which provides as follows:

"That in connection with any claim for servicemen's indemnity filed with the Administrator of Veterans' Affairs after the date of enactment of this Act on account of the death of Jimmie L. Dorser (Veterans' Administration claim numbered XC18061138), the said Jimmy L. Dorser shall be held and considered to have designated his mother, Wilma D. Marsh, North Hollywood, California, as his beneficiary for such indemnity. The enactment of this Act shall not affect payments made to any individual on account of a claim for servicemen's indemnity made before the date of its enactment."

The records disclose that Jimmie Leonard Dorser (XC-18061138) enlisted in the United States Army on October 5, 1949. Pursuant to his application of October 12, 1949, he was issued \$10,000 5-year level-premium-term national service life insurance under policy No. V-14090505, effective October 12, 1949. He named his mother,

Mrs. Wilma D. Dorser (who has since remarried and is known as Mrs. Wilma D. Marsh), the claimant of H. R. 6350, as principal beneficiary, and his brother, Robert L. Dorser, as contingent beneficiary. On November 28, 1949, the serviceman executed a change of beneficiary form, naming his mother and brother as beneficiaries (without specifying whether either was to be the principal or contingent beneficiaries) and showing the amount of insurance as \$1,000. The Veterans' Administration acknowledged this form on December 22, 1949, and requested clarification of the discrepancy between the original application for \$10,000 insurance and the \$1,000 amount indicated on this form. On January 6, 1950, the serviceman advised that he desired the amount of insurance reduced from \$10,000 to \$1,000, but the beneficiaries to remain the same. The contract of national service life insurance was reduced accordingly, and he was so advised by letter of January 24, 1950. The records also disclose that at this time Mr. Dorser reduced the allotment for payment of premiums to an amount sufficient to cover \$1,000 insurance.

On December 16, 1953, the Veterans' Administration received a report from the Department of the Army stating, in part, that the serviceman was missing in action as of December 3, 1950; that he was presumed to have died on December 31, 1953; that a letter had been received from Mrs. Doris A. Dorser, Springfield, Mo., stating that she was the serviceman's wife; and that there was no record of a beneficiary designation under the Servicemen's Indemnity Act of 1951.

By letter of January 5, 1954, the Veterans' Administration advised Mrs. Wilma D. Marsh that she was the named beneficiary for the \$1,000 national service life insurance and, on January 26, 1954, she filed claim for that insurance, requesting settlement of \$10,000 national service life insurance in 36 equal monthly installments. On February 10, 1954, an award of the \$1,000 insurance was made to the claimant, providing for payments of \$28.99 starting December 3, 1950, the date on which the Veterans' Administration presumes Mr. Dorser to have died, and ending November 3, 1953.

Under the Servicemen's Indemnity Act of 1951 (65 Stat. 33; 38 U. S. C. 851, et seq.), a serviceman's indemnity in the amount of \$9,000 automatically became payable as the result of Mr. Dorser's death. Since he died prior to the date of its enactment (April 25, 1951), he necessarily did not designate a beneficiary for such benefits. Section 3 of the mentioned act provides, in part:

"\* \* \* the Administrator of Veterans' Affairs shall cause the indemnity to be paid as provided in section 4 only to the surviving spouse, child, or children (including a stepchild, adopted child, or an illegitimate child if the latter was designated as beneficiary by the insured), parent \* \* \*. If the designated beneficiary or beneficiaries do not survive the insured, or if none has been designated, the Administrator shall make payment of the indemnity to the first eligible class of beneficiaries according to the order set forth above, and in equal shares if the class is composed of more than one person. \* \* \*"

On January 14, 1954, Mrs. Doris A. Dorser filed a claim for servicemen's indemnity with the Veterans' Administration, together with a certified copy of the official record of her ceremonial marriage to the serviceman on February 13, 1950, in Arkansas. Mrs. Dorser remarried following the serviceman's death, and now has the surname of Chandler. On May 14, 1954, the Veterans' Administration

authorized an award of servicemen's indemnity benefits in the amount of \$9,000 to Mrs. Chandler, providing for 120 equal monthly installments of \$83.61, commencing December 3, 1950.

On January 20, 1956, a letter was received from an attorney, in behalf of Mrs. Wilma D. Marsh, regarding her claim for national service life insurance and asserting a possible invalidity of the serviceman's marriage, mentioned above, because of the age of the parties at the time the marriage was performed. The letter was treated by the Veterans' Administration as a claim by Mrs. Marsh for servicemen's indemnity benefits. A field examination was conducted by the Veterans' Administration for the purpose of obtaining evidence with respect to the serviceman's marital status at the time of his death.

After a careful consideration of all of the evidence, an opinion was rendered by the chief attorney, Veterans' Administration Center, Denver, Colo., which was later approved by the General Counsel of this agency, which concluded that the serviceman's widow had attained the statutory age of consent to marry under Arkansas law when the marriage between her and the serviceman was performed; that, although the serviceman had not obtained the statutory age at the time of the marriage, he ratified the marriage after attaining the required age of 18; and that the marriage was, therefore, valid under Arkansas law. Mrs. Marsh was informed that her claim for serviceman's indemnity was disallowed because she was not the designated beneficiary, and that the serviceman's widow was determined to be entitled to the benefits. On July 30, 1956, Mrs. Marsh filed an appeal to the Administrator of Veterans' Affairs from this disallowance. By decision dated October 2, 1956, the Board of Veterans' Appeals denied the appeal, holding that entitlement to servicemen's indemnity had not been established by Mrs. Marsh.

On November 8, 1956, Mrs. Marsh filed suit against the United States of America in the United States District Court for the Southern District of California, central division, for \$10,000, representing the proceeds of national service life insurance issued to her son, plus attorney's fees. She contended that she had been named beneficiary of this insurance and that the serviceman's marriage to Mrs. Chandler was invalid. A motion to dismiss was filed in behalf of the Government and, on April 23, 1957, the district court entered a judgment in favor of the United States, dismissing the action for failure of the complaint to state a cause of action upon which relief might be granted and for want of jurisdiction of the subject matter. An appeal from that judgment was not filed by Mrs. Marsh within the prescribed period. Payments of servicemen's indemnity to Mrs. Doris Chandler were suspended during the pendency of the litigation, but were thereafter resumed, effective from the date of last payment.

It is clear that the veteran reduced his contract of national service life insurance from \$10,000 to \$1,000; that the proceeds of that policy have been paid to the claimant of the private bill; and that the Government's lawful liability under that contract has been discharged. Similarly, it is clear that the serviceman did not designate a beneficiary for his \$9,000 servicemen's indemnity; that the surviving spouse is the first eligible beneficiary for such payments in the absence of a designated beneficiary; and that Mrs. Doris Chandler is the serviceman's surviving spouse.



H. R. 6350 proposes to require that in connection with any claim for servicemen's indemnity filed with the Veterans' Administration after the date of enactment on account of the death of Jimmie L. Dorser, he shall be held to have designated his mother, Mrs. Wilma D. Marsh, as beneficiary. The bill states that "the enactment of this act shall not affect payments made to any individual on account of a claim for servicemen's indemnity made before the date of its enactment." The effect of the quoted sentence is not entirely clear. It is presumed, however, that duplicate payments are not intended. Therefore, if the bill is enacted, the award of servicemen's indemnity to the widow, Mrs. Chandler, would be discontinued, and the remaining unpaid \$83.61 monthly installments of servicemen's indemnity would be paid to Mrs. Marsh. The payments already made to Mrs. Chandler would not be affected. If the intent is otherwise, the bill should be clarified, in the event it is favorably considered by your committee.

The enactment of H. R. 6350, as above construed, would require the Veterans' Administration to discontinue payments to Mrs. Chandler, who is the first eligible beneficiary in the list of beneficiaries specified in the general law, and to pay the remaining indemnity installments to Mrs. Marsh, a member of an inferior class of beneficiaries. The Veterans' Administration is not aware of any justification for such payment of the indemnity to Mrs. Marsh. To grant such preferential treatment in derogation of the existing rights of others under the public law would obviously be discriminatory, and might serve as a precedent for like treatment of similar cases.

The Veterans' Administration does not believe that private bills of this nature should receive favorable consideration.

Advice has been received from the Bureau of the Budget that there would be no objection to the submission of this report to the committee.

Sincerely yours,

H. V. HIGLEY, *Administrator.*

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